

# **EXHIBIT B**

Page 1

UNITED STATES DISTRICT COURT

DISTRICT OF DELAWARE

----- X

MAGTEN ASSET MANAGEMENT CORPORATION and

LAW DEBENTURE TRUST COMPANY OF NEW YORK,

Plaintiffs,

-vs-

NORTHWESTERN CORPORATION,

Defendant.

Civil Action No. C.A. No. 04-1494 (JJF)

----- X

MAGTEN ASSET MANAGEMENT CORP.,

Plaintiff,

-vs-

MICHAEL J. HANSON and ERNIE J. KINDT,

Defendants.

Civil Action No. C.S. No. 05-499 (JJF)

----- X

DATE: November 8, 2007

TIME: 9:00 a.m.

Deposition of ROBERT W. BERLINER, held  
at the offices of Curtis, Mallet-Prevost, Colt &  
Mosle, 101 Park Avenue, New York, New York,

<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       A. Yes.</p> <p>3       Q. -- you've listed as a document that you</p> <p>4       reviewed creditors' First Amended Complaint dated</p> <p>5       October 4th, 2004.</p> <p>6       Do you recognize this as that First</p> <p>7       Amended Complaint?</p> <p>8       A. Yes.</p> <p>9       Q. When did you review the Complaint for</p> <p>10      the first time?</p> <p>11      A. In either August or September of this</p> <p>12      year.</p> <p>13      Q. Who provided you with a copy of the</p> <p>14      Complaint?</p> <p>15      A. Mr. Holmes and Mr. Schwitter.</p> <p>16      Q. Did you have any discussions with</p> <p>17      Mr. Holmes or Mr. Schwitter regarding the contents</p> <p>18      of the Amended Complaint --</p> <p>19      A. No.</p> <p>20      Q. -- at that time?</p> <p>21      Did you ever have any conversations with</p> <p>22      those two individuals regarding the content of this</p> <p>23      Complaint?</p> <p>24      A. I did not.</p> <p>25      Q. Did you ever have a conversation with</p>	<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       any attorneys representing the plaintiffs in this</p> <p>3       action regarding this Complaint?</p> <p>4       A. No, sir.</p> <p>5       Q. I'd like to refer your attention to</p> <p>6       Page 10 of the Complaint, Paragraph 51.</p> <p>7       Do you have that, sir?</p> <p>8       A. Yes, I do.</p> <p>9       Q. It states, "The debtor was insolvent</p> <p>10      both immediately before and immediately after the</p> <p>11      acquisition of MPLLC and the assumption of related</p> <p>12      liabilities. Debtor was engaged in a business with</p> <p>13      unreasonably small capitalization and incurred</p> <p>14      debts beyond its ability to pay both immediately</p> <p>15      before and immediately after the acquisition of</p> <p>16      MPLLC and the assumption of liabilities."</p> <p>17      Sir, do you understand that the debtor</p> <p>18      referred to in this paragraph is Northwestern</p> <p>19      Corporation, the defendant in this case?</p> <p>20      MR. KAPLAN: Rather than asking the</p> <p>21      question, it's defined up front. I'd rather have</p> <p>22      the witness look at the definition.</p> <p>23      MR. PIZZURRO: That's fine. I just want</p> <p>24      his understanding.</p> <p>25      A. That's my understanding, yes.</p>
<p>26</p> <p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       Q. Do you recall, reviewing this paragraph</p> <p>3       of the Complaint, when you looked at the Complaint?</p> <p>4       A. Yes.</p> <p>5       Q. Were you ever asked to offer an opinion</p> <p>6       regarding the allegations contained in this</p> <p>7       paragraph?</p> <p>8       A. No.</p> <p>9       Q. Did you ever consider an opinion</p> <p>10      regarding the allegations contained in this</p> <p>11      paragraph?</p> <p>12      A. No.</p> <p>13      Q. Was there ever any discussion that you</p> <p>14      had either with your colleagues or with any</p> <p>15      attorneys representing the plaintiffs concerning</p> <p>16      the allegations contained in this paragraph?</p> <p>17      MR. KAPLAN: Object to the form.</p> <p>18      A. I think the answer is yes.</p> <p>19      Q. Okay. And what -- with whom did you</p> <p>20      have that -- those discussions, conversations or</p> <p>21      conversation?</p> <p>22      A. With Mr. Holmes and Mr. Schwitter.</p> <p>23      Q. When did you have those conversations or</p> <p>24      conversation?</p> <p>25      A. In August or September of this year.</p>	<p>26</p> <p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       Q. Do you recall whether it was more than</p> <p>3       one conversation?</p> <p>4       A. It was one conversation.</p> <p>5       Q. What was said? What did you say and</p> <p>6       what did they say, to the best of your</p> <p>7       recollection, in that conversation?</p> <p>8       A. The essence of the conversation was that</p> <p>9       they communicated to me that counsel had asked us</p> <p>10      to opine, as I have in the fourth opinion on Page 4</p> <p>11      of my report, based on a hypothetical assumption</p> <p>12      that Clark Fork remained directly obligated for the</p> <p>13      QUIPS following the going flat transactions.</p> <p>14      Q. Sir, let me -- you do understand that</p> <p>15      the issue in Paragraph 51 is the solvency of</p> <p>16      Northwestern Corporation; do you not?</p> <p>17      A. Yes.</p> <p>18      Q. Can you explain to me, then, the</p> <p>19      relationship between that allegation and Opinion</p> <p>20      Number 4?</p> <p>21      MR. KAPLAN: Objection to form.</p> <p>22      A. Yes.</p> <p>23      Q. Please, could you explain?</p> <p>24      A. In reading the deposition transcripts in</p> <p>25      the case, a lot of the testimony had to do with the</p>

1 - ROBERT W. BERLINER -  
 2 going flat transaction, the insolvency issues and  
 3 those kinds of things. And I raised the question  
 4 with my colleagues, you know, much of the testimony  
 5 is seemingly irrelevant to the opinions that we're  
 6 going to be expressing in our report and isn't that  
 7 an odd situation for us?

8 And it was then that I learned that  
 9 the only way that we were going to even remotely  
 10 address any of those was by offering the opinion I  
 11 referred to based on the hypothetical assumption.

12 Q. Let's look at Opinion Number 4. Okay.  
 13 It states, "Assuming that Clark Fork remained  
 14 directly obligated for the QUIPS, following the  
 15 November 15th, 2002, going flat transaction, its  
 16 total liabilities would have materially exceeded  
 17 its total assets."

18 Can you explain to me how that opinion  
 19 relates to the solvency or insolvency of  
 20 Northwestern before or after the going flat  
 21 transaction?

22 MR. KAPLAN: Asked and answered.

23 A. The relationship -- obviously, it  
 24 doesn't relate. The relationship, in my mind,  
 25 was -- it was the linkage as to how -- how come I

29

1 - ROBERT W. BERLINER -  
 2 wasn't going to address the issues related to the  
 3 going flat transaction and the solvency or  
 4 insolvency of Northwestern that for some reasons  
 5 that were apparently legal reasons, counsel had  
 6 restricted my attention to just this particular  
 7 hypothetical assumption and that's the linkage.

8 Q. So you understood -- am I correct that  
 9 you understood that counsel was specifically not  
 10 asking you to opine regarding the solvency of  
 11 Northwestern?

12 MR. KAPLAN: Object to the form.

13 A. Not because they said that in so many  
 14 words but because this is all that I was asked to  
 15 do, so obviously I wasn't asked to address the  
 16 solvency of Northwestern.

17 Q. Did you question that in the  
 18 conversation that we're now referring to that you  
 19 had with your colleagues, did you question why you  
 20 were not being asked to offer an opinion regarding  
 21 solvency or insolvency of Northwestern?

22 A. Yes.

23 Q. What did they tell you?

24 A. They told me that this isn't our area of  
 25 expertise and that may have been a reason why we

30

1 - ROBERT W. BERLINER -  
 2 weren't asked to address it. But I never did find  
 3 out by conversations with counsel as to the reason  
 4 or not.

5 This was what I was asked to do. It was  
 6 relatively easy to do it, and so I felt somewhat  
 7 delighted that this is all I had to do because I  
 8 was concerned about being able to render my report  
 9 by the 19th of September.

10 Q. What else was discussed regarding the  
 11 allegations in this paragraph, Paragraph 51 of the  
 12 Amended Complaint, during the conversation we're  
 13 referring to?

14 A. Nothing else.

15 Q. You testified a moment ago that in that  
 16 conversation you remarked that much of what you had  
 17 read in the deposition testimony seemed to be  
 18 irrelevant to the issues that you were being asked  
 19 to opine on.

20 Do you recall saying that?

21 A. Yes.

22 Q. Why did you feel that way?

23 A. Because I wasn't being asked to express  
 24 any opinions such as the ones you've asked me about  
 25 relating to the solvency or insolvency of

31

1 - ROBERT W. BERLINER -  
 2 Northwestern or any of the ramifications relating  
 3 to the going flat transaction.

4 Q. You did rely, however -- strike that.

5 Your report reflects that you did review  
 6 deposition transcripts taken in this case, correct?

7 A. Correct.

8 Q. Did you view those as irrelevant to any  
 9 of the opinions that you've offered in this case?

10 A. No.

11 Q. Okay. But irrelevant to Opinion  
 12 Number 4, is that what I understand; is that  
 13 correct?

14 MR. KAPLAN: Object to form.

15 A. Yes.

16 MS. DELANEY: Are you expecting any  
 17 males to join us? There is apparently a  
 18 Mr. Schwartz here to join the deposition. Does  
 19 anyone know who he is?

20 Q. Off the record.

21 (Whereupon, there was a brief recess in  
 22 the proceedings.)

23 Q. Mr. Berliner, prior to your retention by  
 24 Fried, Frank and Storch Amini in this case, had you  
 25 ever been employed by Magen Asset Corporation?

32

<p>1        - ROBERT W. BERLINER -</p> <p>2            MR. KAPLAN: Object to the form.</p> <p>3        A. No.</p> <p>4        Q. Had you ever had any associations with</p> <p>5        Magten?</p> <p>6        A. No.</p> <p>7        Q. Had you ever been employed by Law</p> <p>8        Debenture Corporation?</p> <p>9        A. No.</p> <p>10      Q. Had you ever had any association with</p> <p>11      Law Debenture Corporation?</p> <p>12      A. No.</p> <p>13      Q. To the best of your knowledge, did your</p> <p>14      organization prior to this retention have any prior</p> <p>15      association with Magten?</p> <p>16      A. No.</p> <p>17      Q. To the best of your knowledge prior to</p> <p>18      this retention, did your organization have any prior</p> <p>19      association with Law Debenture?</p> <p>20      A. No, sir.</p> <p>21      Q. Can we look, Mr. Berliner, at Exhibit A</p> <p>22      to your report, which is at Page -- there's a lot</p> <p>23      of different A-1s in here.</p> <p>24      A. I'll bet.</p> <p>25      Q. Which is your CV, your curriculum vita.</p>	<p>1        - ROBERT W. BERLINER -</p> <p>2            Sir, you are a certified public</p> <p>3            accountant?</p> <p>4        A. Yes, sir.</p> <p>5        Q. When was the last time you practiced as</p> <p>6            a certified public accountant?</p> <p>7        A. I believe I'm doing that today.</p> <p>8        Q. Okay. What is your specialty apart from</p> <p>9            testimony as a certified public accountant? Do you</p> <p>10          perform audits?</p> <p>11          A. Yes. My specialty was auditing and</p> <p>12          accounting.</p> <p>13          Q. When was the last time you performed or</p> <p>14          participated in an audit?</p> <p>15          A. The last time I directly participated in</p> <p>16          an audit was about 1985.</p> <p>17          Q. So then, sir, is it safe to say that you</p> <p>18          never participated as a CPA in any goodwill</p> <p>19          impairment analysis under SFAS 142?</p> <p>20          MR. KAPLAN: Object to the form.</p> <p>21          A. No. That's not fair to say.</p> <p>22          Q. Have you ever participated in such</p> <p>23          analysis?</p> <p>24          A. I have.</p> <p>25          Q. When was that?</p>
<p>1        - ROBERT W. BERLINER -</p> <p>2        A. That was in 2005, 2006 and 2007.</p> <p>3        Q. Can you explain what you did in 2005?</p> <p>4        A. I was a participant in a goodwill</p> <p>5        analysis with respect to the goodwill of a</p> <p>6        defendant in a lawsuit.</p> <p>7        Q. What did you do?</p> <p>8        A. I reviewed various documents and</p> <p>9        performed some calculations to determine whether or</p> <p>10       not, and if so, how much the goodwill of the entity</p> <p>11       had been impaired.</p> <p>12       Q. Did you perform a valuation in that</p> <p>13       assignment?</p> <p>14       A. I did not. I don't perform valuations.</p> <p>15       Q. Can you explain what you did in 2006?</p> <p>16       MR. KAPLAN: Object to the form.</p> <p>17       A. In 2006, I consulted with one of my</p> <p>18       partners with respect to the question of when the</p> <p>19       goodwill of a particular company was impaired.</p> <p>20       Q. What was the nature of that</p> <p>21       consultation?</p> <p>22       A. We were dealing with one of the largest,</p> <p>23       if not the largest, write-off of goodwill in the</p> <p>24       history of the United States. And we were</p> <p>25       endeavoring to determine whether or not such</p>	<p>1        - ROBERT W. BERLINER -</p> <p>2        write-off should have been taken earlier than it</p> <p>3        was taken.</p> <p>4        Q. What was the nature of the work that you</p> <p>5        did?</p> <p>6        A. I consulted with my partner, who was</p> <p>7        responsible for that engagement, and offered my</p> <p>8        views.</p> <p>9        Q. Your views with respect to what aspect</p> <p>10       of the goodwill impairment analysis?</p> <p>11       A. The timing of the impairment.</p> <p>12       Q. Can you explain what you did in 2007 in</p> <p>13       respect to -- with respect to goodwill impairment?</p> <p>14       A. In 2007, I addressed the very same issue</p> <p>15       in this litigation.</p> <p>16       Q. I see. Mr. Berliner, are you accredited</p> <p>17       by any organization or professional society in</p> <p>18       business valuation?</p> <p>19       A. I am not.</p> <p>20       Q. Are you an accredited senior appraiser?</p> <p>21       A. No, sir.</p> <p>22       Q. Do you have any credentials from the</p> <p>23       American Institute of CPA accredited in business</p> <p>24       valuation?</p> <p>25       A. I do not.</p>

1 - ROBERT W. BERLINER -  
 2 Q. Do you consider yourself to be an expert  
 3 in business valuation?  
 4 A. I do not.  
 5 Q. Have you ever been qualified as an  
 6 expert in valuation by any court or arbitration  
 7 tribunal?  
 8 A. No, sir.  
 9 Q. Have you ever offered any expert  
 10 testimony regarding business valuation in any  
 11 proceeding?  
 12 MR. KAPLAN: Object to the form.  
 13 A. No, sir.  
 14 Q. In any of those proceedings in which you  
 15 have offered an expert opinion, have you ever been  
 16 the subject of a Daubert motion, if you know?  
 17 A. I know what a Daubert motion is. I have  
 18 been the subject of motions brought to disqualify  
 19 me as a testifying expert. I don't know whether  
 20 those motions would have been brought under the  
 21 so-called -- would qualify as a Daubert motion.  
 22 Q. How many times have such motions to  
 23 disqualify been made to your knowledge?  
 24 A. I would say between six and ten times.  
 25 Q. Were you ever disqualified as a result

37

1 - ROBERT W. BERLINER -  
 2 of the motions?  
 3 A. Twice.  
 4 Q. When was the first time?  
 5 A. The first time would have been around  
 6 1992, thereabouts.  
 7 Q. What was the opinion that you offered,  
 8 to the best of your recollection, in 1992 that  
 9 resulted in your disqualification?  
 10 A. I didn't offer any opinion. I had just  
 11 been engaged in a lawsuit and had hardly done any  
 12 work in that lawsuit at the time.  
 13 Q. What was the basis for your  
 14 disqualification?  
 15 A. The defendant in the lawsuit offered  
 16 three reasons: One, that I had a commanding  
 17 knowledge of its auditing methodology; two, that I  
 18 had a commanding knowledge of how it defends itself  
 19 in litigation; and three, that I was under  
 20 retention to them.  
 21 Q. What was the basis for your  
 22 disqualification?  
 23 A. A magistrate judge ruled in favor of the  
 24 motion. It was appealed, and the judge ruled that  
 25 there were no matters of law that would enable him

38

1 - ROBERT W. BERLINER -  
 2 to overrule the magistrate.  
 3 Q. What did you understand to be the basis  
 4 for the magistrate judge's decision?  
 5 A. Oh, I was retained by that accounting  
 6 firm some six or seven years prior to that time in  
 7 the defense of two of its partners in a  
 8 2E administrative proceeding brought by the  
 9 Securities and Exchange Commission, and that was  
 10 the basis of the decision, I believe.  
 11 Q. Did you understand it was determined  
 12 that you had a conflict of interest and that's what  
 13 led to your disqualification?  
 14 MR. KAPLAN: Object to the form.  
 15 A. I understood that the argument was that  
 16 the knowledge I had would be prejudicial to the  
 17 defendant in the litigation.  
 18 Q. That was knowledge you had obtained as a  
 19 result of your association or employ by the  
 20 defendant, correct?  
 21 A. Correct.  
 22 Q. What was the second time that you were  
 23 disqualified?  
 24 A. The second time I was disqualified was  
 25 in about I would say 1993 or so, or '4, and that

39

1 - ROBERT W. BERLINER -  
 2 was a similar situation in that the reasons offered  
 3 for the motion were again that I had a commanding  
 4 knowledge of the accounting firm's auditing  
 5 methodology and how they defend themselves in  
 6 litigation.  
 7 Q. Sir, as a CPA, have you ever reviewed  
 8 valuations or appraisals done by appraisers to  
 9 determine whether an SFAS 142 goodwill impairment  
 10 analysis was necessary?  
 11 MR. KAPLAN: Object to the form.  
 12 A. Yes.  
 13 Q. When did you do that?  
 14 A. I believe I did it in 2005 and again in  
 15 connection with this litigation.  
 16 Q. Did you perform a valuation in this  
 17 litigation?  
 18 A. I did not.  
 19 Q. Let me ask you one question and then  
 20 maybe we'll take a two-minute break or five-minute  
 21 break.  
 22 Sir, are you familiar with the Uniform  
 23 Standards of Professional Appraisal Practice?  
 24 A. I've learned of them in this case, but  
 25 I'm not familiar with them.

40

1 - ROBERT W. BERLINER -  
 2 Q. When did you learn of them in this case?  
 3 A. Well, I would have understood there to  
 4 exist such standards but the first time, I guess,  
 5 that I saw them in that particular terminology was  
 6 when I read the expert reports of the experts on  
 7 behalf of defendants in this case.  
 8 Q. So that -- strike that.  
 9 Is it, therefore, safe to assume that  
 10 informing the opinions and in preparing your  
 11 report, which is Exhibit 1, that you did not refer  
 12 to or use any of the Uniform Standards of  
 13 Professional Appraisal Practice?  
 14 MR. KAPLAN: Object to the form.  
 15 A. It's fair to say that.  
 16 MR. PIZZURRO: Maybe take five minutes.  
 17 (Whereupon, there was a brief recess in  
 18 the proceedings.)  
 19 Q. Mr. Berliner, you referred to three  
 20 instances in which you participated in a SFAS 143  
 21 impairment analysis.  
 22 Do you recall that testimony?  
 23 A. Yes.  
 24 Q. You referred to years 2005, 2006 and  
 25 2007.

41

1 - ROBERT W. BERLINER -  
 2 As I recall, 2007 is this case, that's  
 3 what you're referring to; is that right?  
 4 A. And the second one covered both 2006 and  
 5 '7.  
 6 Q. So, am I correct in understanding that  
 7 the work you did in 2006 with respect to a  
 8 142 goodwill impairment analysis is work that  
 9 relates to this litigation?  
 10 A. No.  
 11 Q. I'm sorry. Did it relate to a  
 12 litigation?  
 13 A. Yes.  
 14 Q. Did you offer an opinion as an expert in  
 15 this litigation?  
 16 A. No.  
 17 Q. The work that you performed in 2005, was  
 18 that also in connection with a litigation?  
 19 A. Yes, sir.  
 20 Q. Did you offer an opinion in that  
 21 litigation?  
 22 A. I did.  
 23 Q. What was the name of that case? Do you  
 24 recall the name of the case?  
 25 A. Let me see if I can get it from -- the

42

1 - ROBERT W. BERLINER -  
 2 name of the case was the Huff Alternative Income  
 3 Fund LP against PriceWaterhouseCoopers LLP.  
 4 Q. Is that the case which is listed at  
 5 Page B2 of Exhibit B to your report?  
 6 A. Yes, sir.  
 7 Q. What was -- were you representing  
 8 plaintiff or the defendant in that case?  
 9 A. The plaintiff.  
 10 Q. Was there a judgment or verdict in that  
 11 case?  
 12 A. I believe that case settled.  
 13 Q. Sir, do you remember the name of the  
 14 case you testified to in 1992 where there was a  
 15 successful disqualification motion made with  
 16 respect to your participation?  
 17 MR. KAPLAN: Object to the form.  
 18 A. I refer to it as the Interfund case, but  
 19 I don't think that was the exact name of the case  
 20 so I don't recall the exact name of the case.  
 21 Q. What court was that case?  
 22 A. I don't recall.  
 23 Q. Do you recall the state?  
 24 A. No.  
 25 Q. Do you recall the name of the case --

43

1 - ROBERT W. BERLINER -  
 2 the second case that you referred to, which I  
 3 believe was 1993, in which a disqualification  
 4 motion was made?  
 5 A. Yes. It was a class action case  
 6 involving the Republic Bank, maybe the First  
 7 Republic Bank. I don't remember the exact name  
 8 of -- Texas, not New York.  
 9 Q. Do you recall what court that was in?  
 10 A. Yes. It was a court in Texas.  
 11 Q. Do you recall whether --  
 12 A. Dallas, I believe. I believe federal  
 13 court in Dallas.  
 14 Q. Earlier, if you recall, we were  
 15 discussing a discussion you had with your  
 16 colleagues regarding the allegations in  
 17 Paragraph 51 of the Complaint.  
 18 Do you recall that testimony?  
 19 A. Not in the Complaint in this litigation,  
 20 but the First Amended Complaint.  
 21 Q. Yes, sir, the First Amended Complaint.  
 22 A. Yes, sir.  
 23 Q. Do you remember that testimony?  
 24 A. Yes.  
 25 Q. Sir, do you recall whether or not either

44

1 - ROBERT W. BERLINER -  
 2 of your colleagues, Mr. Holmes or Mr. Schwitter,  
 3 had done a preliminary analysis of Northwestern  
 4 solvency either before or after the going flat  
 5 transaction?

6 A. I recall we did not.

7 Q. You did not?

8 A. No.

9 Q. No one at your organization did; is that  
 10 correct?

11 A. That's correct.

12 Q. Do you know if any such preliminary  
 13 analysis was ever done by anyone in the employ of  
 14 the plaintiffs in this case?

15 A. No, I don't.

16 Q. Sir, if we look back again at Page 4 of  
 17 your report, Opinion Number 1. Opinion Number 1  
 18 states, "The consolidated financial statements of  
 19 NW," -- Northwestern, "originally filed with the  
 20 SEC Forms 10-Q for the quarters ended March 31st,  
 21 June 30th and September 30th, 2002, were materially  
 22 false and misleading as a result of various  
 23 violations of GAAP and SEC regulations."

24 Sir, did you or do you have an  
 25 understanding as to why -- strike that.

45

1 - ROBERT W. BERLINER -  
 2 Do you have an understanding as to how  
 3 that opinion is relevant to any issue in this  
 4 lawsuit?

5 A. Yes.

6 Q. What's your understanding?

7 A. One, had these violations not taken  
 8 place, the covenants might not have been violated.  
 9 Two, had the financial statements been properly  
 10 presented, maybe the Montana Power Commission  
 11 wouldn't have approved the going flat transaction  
 12 or whoever had to approve it wouldn't have approved  
 13 it. Maybe that would never have taken place.

14 Those would be the kinds of things I  
 think would make my opinion relevant.

15 Q. Where did you obtain that understanding?

16 A. Purely supposition on my part.

17 Q. Did anyone ever tell you those things?

18 A. No.

19 Q. Did you ever have a conversation in  
 20 which you were told or in which it was discussed  
 21 that this was why your opinion in Number 1 was  
 22 relevant?

23 A. No.

24 Q. It was purely your own analysis based on

46

1 - ROBERT W. BERLINER -  
 2 the reading of the Complaint; is that correct?

3 A. And the deposition transcripts  
 4 primarily.

5 Q. Sir, do you have any experience with the  
 6 Montana -- you called it the Montana Power  
 7 Commission.

8 Were you referring to the Montana Public  
 9 Service Commission?

10 A. Yes.

11 Q. Do you have any experience with the  
 12 Montana Public Service Commission?

13 A. No, sir.

14 Q. Do you know what the scope of authority  
 15 is of the Montana Public Service Commission?

16 A. No.

17 Q. Do you know whether the Montana Public  
 18 Service Commission could have approved the going  
 19 flat transaction?

20 A. Not with any degree of certainty.

21 Q. Why did you assume that your opinion  
 22 given in Number 1 would be relevant, then, to  
 23 whether or not the Montana Public Service  
 24 Commission may have taken some action with respect  
 25 to the going flat transaction?

47

1 - ROBERT W. BERLINER -

2 A. Because it seemed to me from all the  
 3 documents I read that there was approval required  
 4 for this transaction to go through. And I guess my  
 5 recollection is that the Montana Public Service  
 6 Commission -- Public Utility Service Commission was  
 7 involved in that approval and that they might have  
 8 thought differently about it had the financials --  
 9 the true financial condition of Northwestern been  
 10 known.

11 Q. Do you have an understanding as to  
 12 whether or not the Montana Public Service  
 13 Commission, in fact, approved the transaction?

14 MR. KAPLAN: Object to form.

15 A. No.

16 Q. Do you have any understanding as to when  
 17 Northwestern may have applied to the Montana Public  
 18 Service Commission for the approval of the  
 19 transaction?

20 MR. KAPLAN: Object to the form.

21 A. I assume it was prior to the transaction  
 22 taking place.

23 Q. Do you have any understanding as to  
 24 whether or not the financials upon which you opine  
 25 were put before the Montana Public Service

48

<p>1            - ROBERT W. BERLINER -</p> <p>2        Q. What is Mr. Holmes's educational</p> <p>3        background?</p> <p>4        A. He's a college graduate. I don't</p> <p>5        recall -- I don't recall what school and whether he</p> <p>6        has any advanced graduate degrees or not. I don't</p> <p>7        know.</p> <p>8        Q. Is he a CPA?</p> <p>9        A. He is.</p> <p>10      Q. Is he accredited by any organization or</p> <p>11      professional society in business valuation?</p> <p>12      A. He is not.</p> <p>13      Q. Is he expert in business valuation?</p> <p>14      A. He's not.</p> <p>15      Q. Sir, I want to direct your attention to</p> <p>16      Page 212.</p> <p>17      Do you have that, sir?</p> <p>18      A. Yes.</p> <p>19      Q. The first paragraph under that</p> <p>20      underlined heading, second sentence, it says,</p> <p>21      "Therefore, I recalculated Expanets' business</p> <p>22      enterprise value based on more realistic</p> <p>23      assumptions of its projected operating performance</p> <p>24      and cash flows."</p> <p>25      Do you see that?</p>	<p>1            - ROBERT W. BERLINER -</p> <p>2        A. I do.</p> <p>3        Q. Did I misunderstand you earlier when you</p> <p>4        said that you didn't perform any valuation in this</p> <p>5        case?</p> <p>6            MR. KAPLAN: Object to the form.</p> <p>7        A. Yes.</p> <p>8        Q. Can you explain to me what you were</p> <p>9        doing then, in this sentence that we just read?</p> <p>10      A. Yes. I was taking the valuation that</p> <p>11      was performed by American Appraisal and following</p> <p>12      their methodology, correcting some of the</p> <p>13      assumptions that they used and some of the data</p> <p>14      that they based their valuation on based upon my</p> <p>15      knowledge of the facts of the case.</p> <p>16      Q. Sir, do you understand that American --</p> <p>17      American Appraisers Association, AAA is a</p> <p>18      recognized expert in performing business</p> <p>19      valuations?</p> <p>20      A. I do.</p> <p>21            MR. KAPLAN: Object to the form.</p> <p>22      Q. And you are not; is that correct?</p> <p>23      A. That's correct.</p> <p>24      Q. Do you know whether in performing the</p> <p>25      valuation that you criticized AAA followed the</p>
<p>53</p> <p>1            - ROBERT W. BERLINER -</p> <p>2      Uniform Standards of Professional Appraisal</p> <p>3      Practice?</p> <p>4      A. I do.</p> <p>5      Q. And did they?</p> <p>6      A. They did.</p> <p>7      Q. Did you in criticizing it?</p> <p>8      A. I did not.</p> <p>9      Q. Sir, how did you recalculate the</p> <p>10     projected operating performance and cash flows in</p> <p>11     coming to an alternative valuation of Expanets?</p> <p>12     MR. KAPLAN: Object to form.</p> <p>13     A. I recognized that despite the</p> <p>14     credentials of American Appraisal, which you cited,</p> <p>15     they expressly disclaimed any verification of the</p> <p>16     data provided to them by Northwestern; therefore,</p> <p>17     following the principle of garbage in-garbage out,</p> <p>18     that doesn't mean that their business valuation is</p> <p>19     appropriate, because to the extent that the</p> <p>20     information they were given by Northwestern and</p> <p>21     which they used to prepare their valuation were</p> <p>22     erroneous, they would come up with an erroneous</p> <p>23     valuation.</p> <p>24     So I corrected as best as I could the</p> <p>25     information that they obtained from Northwestern.</p>	<p>54</p> <p>1            - ROBERT W. BERLINER -</p> <p>2      But following that, used exactly their methodology</p> <p>3      to come up with the valuation.</p> <p>4            It's for that reason that I testified</p> <p>5      that I don't believe I performed my own valuation.</p> <p>6      What I did is modify their valuation by inputting</p> <p>7      appropriate data.</p> <p>8      Q. Where did that appropriate data come</p> <p>9      from?</p> <p>10     A. That appropriate data came from my</p> <p>11     analysis of the financial data in the case,</p> <p>12     primarily the monthly financial information reports</p> <p>13     of Northwestern and e-mails and testimony and all</p> <p>14     of the documents that I reviewed in this case.</p> <p>15     Q. And when were those monthly financial</p> <p>16     information reports generated?</p> <p>17     A. They were generated on a monthly basis.</p> <p>18     Q. In what months?</p> <p>19     A. Every month of the year.</p> <p>20     Q. What months did you look at in order to</p> <p>21     come to your revised projections?</p> <p>22     A. I believe we looked at all of the</p> <p>23     months.</p> <p>24     Q. In what years?</p> <p>25     A. In the year 2002, and I think several in</p>

<p>1            - ROBERT W. BERLINER -  2        were provided by the management of both  3        Northwestern and Expanets, collectively referred to  4        as management. This information has been accepted  5        without further verification as proper  6        representations of the reporting units operations  7        and condition."</p> <p>8            That is what I'm referring to.</p> <p>9        Q. When were those projections prepared; do  10      you know?</p> <p>11      MR. KAPLAN: Object to the form.</p> <p>12      A. They would have been prepared -- I  13      believe they were Northwestern's projections as of  14      the beginning of the year.</p> <p>15      Q. Would it refresh your recollection if I  16      told you that they had been prepared in late  17      October 2001?</p> <p>18      A. That sounds reasonable, but as of the  19      beginning of the year.</p> <p>20      Q. Correct. Am I correct, this is just  21      simple logic, I guess, that the information upon  22      which you relied to revise the projections did not  23      exist at the time the projections were created?</p> <p>24      MR. KAPLAN: Object to the form.</p> <p>25      Q. Is that correct?</p>	<p>1            - ROBERT W. BERLINER -  2        A. No, that's incorrect.  3        Q. What information -- which of the MFIRs,  4        which of the deposition transcripts, which of the  5        internal documents did you review, memoranda,  6        e-mails referred to in your report were generated  7        prior to the date the projections were created?  8        A. As I believe I testified to earlier, I  9        looked at the MFIRs for 2001. I looked at e-mails  10      that were written in periods prior to  11      January 1st, '02. I looked at the deposition  12      testimony referring to the facts and circumstances  13      existing prior to January 1st, '02.  14      And all of the other documents that I  15      reviewed in this litigation gave me a feeling for  16      the financial performance and prospects of Expanets  17      using that information, supplemented by the fact  18      that information available subsequent to  19      January 1st, '02, confirmed what the information  20      available prior to January 1st, '02, indicated.  21      It became apparent to me that the  22      projections of Northwestern were overly optimistic  23      to say the least.  24      Q. What's your best recollection from  25      reviewing all of these documents of the major</p>
<p>1            - ROBERT W. BERLINER -  2        reason why Expanets had financial difficulties and  3        operating performance difficulties in the first  4        part of 2002?</p> <p>5        A. I think that a very significant factor  6        was the nonfunctioning of what was called its  7        EXPERT system.</p> <p>8        Q. Do you have an understanding as to when  9        Expanets started to use or migrated to the EXPERT  10      system?</p> <p>11      A. I believe in November of 2001.</p> <p>12      Q. Okay. The projections we've established  13      were prepared in October of 2001?</p> <p>14      MR. KAPLAN: Object to the form.</p> <p>15      A. Yes.</p> <p>16      Q. Which MFIRs for the year 2001 did you  17      review?</p> <p>18      A. I believe all of them.</p> <p>19      Q. All of 2001 MFIRs?</p> <p>20      A. Yes.</p> <p>21      Q. Did you review the 10-K of Northwestern  22      for fiscal year 2001?</p> <p>23      A. Yes.</p> <p>24      Q. Did you offer any opinion as to that  25      10-K?</p>	<p>1            - ROBERT W. BERLINER -  2        A. No. I was not asked to address that. I  3        did not.  4        Q. Can you explain for us, sir, what the  5        process is for determining an impairment, goodwill  6        impairment under SFAS 142?  7        A. It's a two-step process. The first step  8        is a comparison of the business enterprise value  9        with the carrying value of the entity. To the  10      extent that the carrying value of the entity  11      exceeds the business enterprise value, step two is  12      invoked.  13      And under step two, one determines an  14      implied value of goodwill following the methodology  15      of SFAS -- I'm sorry -- APB 16, APB 16 on purchase  16      accounting. Then, one compares the implied value  17      of goodwill to the carrying value of goodwill to  18      determine whether or not goodwill is impaired.  19      Q. Who performs the business enterprise  20      valuation that's used in step one?  21      A. In this case, American Appraisal.  22      Q. Would the auditing firm prepare that  23      valuation?  24      A. The auditing firm would not because if  25      it did, it would be auditing its own work and would</p>

<p>1 - ROBERT W. BERLINER -  2 lose its independence.  3 Q. So you would bring in a professional  4 appraiser?  5 A. That's correct.  6 Q. Presumably the professional appraiser  7 would follow and be bound by the standards of the  8 profession, which are the Uniform Standards of  9 Professional Appraisal Practice?  10 A. That's correct. And the auditor --  11 Q. In performing your alternative --  12 MR. KAPLAN: Let him finish. He was in  13 the middle of an answer.  14 A. The auditor would be bound by generally  15 accepted auditing standards of which SFAS 73  16 relates to how the auditor would relate to the  17 outside specialist or appraiser.  18 Q. So, in -- we've established that in  19 order to perform appropriately a 142 goodwill  20 impairment analysis, you must start with an  21 appropriate business enterprise valuation done by  22 professionals using the standards governing the  23 appraisal profession, correct?  24 A. Yes.  25 Q. Now, I think we've also established that </p>	<p>1 - ROBERT W. BERLINER -  2 when you did your alternative impairment analysis  3 which is reflected in your report, you prepared a  4 business valuation, enterprise valuation which did  5 not follow those standards and with respect to  6 which you have no expertise; is that correct?  7 MR. KAPLAN: Object to the form.  8 A. No. I wouldn't agree with the way  9 you've characterized what I did at all.  10 Q. How would you disagree with my  11 characterization?  12 A. Well, first, as I testified, I did not  13 do a business enterprise valuation.  14 Q. Sir, your testimony was that in order to  15 perform an SFAS 142 impairment analysis, one must  16 start with an appropriate business enterprise  17 valuation, and that that must be done by  18 independent professionals who are governed by  19 standards of that profession.  20 You've also provided an opinion which  21 purports to be an SFAS 142 goodwill impairment  22 analysis.  23 And since we've agreed that you need to  24 have a business enterprise valuation done as part  25 of that analysis and since you've testified that </p>
<p>69</p> <p>1 - ROBERT W. BERLINER -  2 you are not expert or qualified to do that, I just  3 want to understand how it is you could do an  4 alternative 142 impairment analysis.  5 MR. KAPLAN: Object to the form.  6 A. For the very reasons that statement on  7 auditing standard 73 sets forth guidance, and that  8 standard says that the auditor has to evaluate the  9 credentials of the outside specialist. In this  10 case, they go without question. As we discussed  11 before, American Appraisal is a highly recognized  12 appraiser, but also sets forth the need for auditor  13 to understand the assumptions that are used by the  14 appraiser.  15 And I used -- I'm repeating probably for  16 the third time, I used the American Appraisal  17 determination of business enterprise value but  18 recognizing the caveat in American Appraisal's  19 report that they did nothing to verify the  20 information provided to them.  21 I did and I looked at the information  22 provided to them and adjusted that information to  23 conform to reality, as I saw it. I made no other  24 changes to the methodology that American Appraisal  25 used.</p>	<p>70</p> <p>1 - ROBERT W. BERLINER -  2 So therefore, even though I'm not an  3 expert appraiser and wouldn't present myself as  4 being able to do the appraisal that American  5 Appraisal did, having their appraisal before me, I  6 could criticize their appraisal and modify it to  7 come up with an appropriate business enterprise  8 value based upon appropriate input information that  9 was realistic and not the optimistic unrealistic  10 information that was provided by the management of  11 Northwestern and Expanets.  12 Q. Now, when you were explaining how the  13 143 process works --  14 A. 142 do you mean?  15 Q. Sorry. 142, I apologize. -- 142  16 process works. The valuation which is prepared by  17 the independent expert is presented to the  18 accounting firm which is conducting the audit; is  19 that correct?  20 MR. KAPLAN: Object to form.  21 A. By "independent expert" you mean an  22 American Appraisal?  23 Q. Exactly.  24 A. Yes. It's presented to the company, not  25 to the accounting firm. The company then gets it </p>

<p>1            - ROBERT W. BERLINER -  2            from the accounting firm.  3            Q. Then what is --  4            A. From -- the accounting firm then gets it  5            from the company.  6            Q. What's the role of the accounting firm  7            in this process?  8            A. The role of the accounting firm is to  9            follow SFAS 73 in satisfying itself as to the  10          assumptions used and the credibility of the  11          appraiser.  12          Q. And is the role of the accounting firm  13          that has a problem with the valuation or the  14          assumptions to perform an alternative valuation?  15          MR. KAPLAN: Object to the form.  16          A. That's one possibility, to engage their  17          own appraiser to perform a valuation to compare to  18          the company's, Northwestern's appraiser.  19          Q. When you say employ or engage their own  20          you're talking about another independent American  21          Appraisal type organization?  22          A. Exactly.  23          Q. Because the CPAs in the auditing firm  24          are not either qualified nor -- and they would risk  25          their independence if they themselves were to</p>	<p>1            - ROBERT W. BERLINER -  2            conduct an alternative valuation; is that right?  3            A. Yes.  4            Q. You're a CPA?  5            A. Yes.  6            Q. You conducted an alternative valuation?  7            A. No. I didn't conduct an alternative  8            valuation.  9            Q. You did not?  10          A. No. I modified the American Appraisal  11          valuation.  12          Q. That's something, however, that is  13          beyond the scope of any role that the accountants  14          as auditors would be performing in the normal 142  15          process, correct?  16          MR. KAPLAN: Object to the form.  17          A. I don't believe so. I don't believe  18          that's correct.  19          Q. So are you saying that the auditors  20          could perform their own valuation or unilaterally  21          modify the valuation with which they were presented  22          by the independent appraiser?  23          MR. KAPLAN: Object to the form.  24          A. The latter. Just as an auditor in  25          examining the financial statements of its client</p>
<p>73</p> <p>1            - ROBERT W. BERLINER -  2            makes certain adjustments, proposes certain  3            adjustments to those financial statements, that  4            doesn't mean the auditor is preparing the financial  5            statements.  6            Likewise, the auditor could propose an  7            adjustment to the appraiser's determination of the  8            business enterprise value if the auditor believed  9            that the -- some of the inputs that the client had  10          provided were inaccurate.  11          They're not overriding the expertise and  12          methodology of the appraiser. They're modifying  13          it, because the appraiser disclaimed responsibility  14          for the data inputted.  15          So, I think that's a very logical  16          explanation of why I was able to modify the  17          American Appraisal determination of business  18          enterprise value and why I don't believe that in  19          that process I did my own business enterprise  20          valuation.  21          Q. Do you know of any case where 142  22          analysis is being done where the auditor modified  23          the appraisal -- the independent appraisal with  24          which it was provided by the expert?  25          MR. KAPLAN: Object to the form.</p>	<p>74</p> <p>1            - ROBERT W. BERLINER -  2            A. I'm not aware of those. I mean, we have  3            to review practice.  4            Q. You have never in a professional  5            capacity been employed by an auditing firm to  6            review an appraisal in connection with a 143 --  7            sorry, 142 goodwill impairment analysis; is that  8            right?  9            A. In connection with an audit?  10          Q. Correct.  11          A. No, I have not.  12          Q. I think you testified that you don't  13          believe you did an independent valuation because  14          you simply followed precisely the methodology of  15          American Appraisers; is that correct?  16          A. Yes. Yes.  17          Q. With respect to Expanets, American  18          Appraisers also considered a market approach in  19          preparing the valuation; isn't that right?  20          A. That's correct.  21          Q. And you did not; is that right?  22          A. I did not what?  23          Q. You did not consider the market approach  24          in performing your alternative valuation?  25          A. I considered the market approach.</p>

1 - ROBERT W. BERLINER -  
 2 Q. And where is it? Is it reflected in  
 3 your report that you considered the market  
 4 approach?  
 5 A. I considered -- I didn't do a market  
 6 approach. I didn't attempt to change American  
 7 Appraisal's market approach because that was  
 8 something that would have been far more difficult  
 9 for me to do and would have been very costly and  
 10 time-consuming. And it was not something that I  
 11 could do within the time frame that I was given to  
 12 develop this report.  
 13 Secondly, the American Appraisal  
 14 determination of business enterprise value based on  
 15 the market approach pretty much coalesced with its  
 16 determination of business enterprise value under  
 17 the income approach. And American Appraisal gave  
 18 equal weight to the two approaches in their  
 19 opinion.  
 20 And, as I understand the valuation of  
 21 determination of business enterprise value, if done  
 22 correctly, the income approach and the market  
 23 approach tend to come up with the similar  
 24 valuations. It's when the weighting changes, so  
 25 you need not necessarily, as an appraiser, say

77

1 - ROBERT W. BERLINER -  
 2 we're going to give equal weight to each.  
 3 There may be circumstances where one  
 4 approach may be giving greater weight than the  
 5 other. That wasn't the case here.  
 6 So therefore, I considered the fact that  
 7 American Appraisal market approach pretty much  
 8 coalesced with their income approach, and I didn't  
 9 see any reason where I had to deal with the market  
 10 approach.  
 11 Q. So if I understand your testimony, the  
 12 market approach when used by American Appraisers,  
 13 coalesced, cooperated the value it had obtained  
 14 doing the discounted cash flow analysis.  
 15 A. It was very close.  
 16 Q. Very close. And yet you didn't attempt  
 17 to do any kind of market, independent market  
 18 analysis to see whether there's any way that you  
 19 could cooperate your own independent valuation  
 20 based on after acquired information relying solely  
 21 on the discounted cash flow approach; is that  
 22 right?  
 23 MR. KAPLAN: Object to the form.  
 24 A. Yes.  
 25 MR. PIZZURRO: Let's mark this as the

78

1 - ROBERT W. BERLINER -  
 2 next exhibit.  
 3 (Whereupon, Berliner Exhibit 5 was  
 4 marked at this time.)  
 5 Q. I'm going to hand you another document,  
 6 which is several pages, covered by the American  
 7 Appraisal Standard Board USPAP 2002, effective  
 8 January 1st, 2002, through December 31st, 2002. I  
 9 would direct your attention to the third page of  
 10 the exhibit, which is the last page of the exhibit,  
 11 Standards Rule 9-4.

12 Do you see that, sir?

13 A. Yes.

14 MR. KAPLAN: That looks to be cut off.  
 15 Do you have a complete version of 9-4?

16 MR. PIZZURRO: We have a complete -- we  
 17 have it here.

18 MS. DELANEY: What's cut off?

19 MR. KAPLAN: 9-4 looks like it ends in  
 20 the middle of the page.

21 MR. PIZZURRO: We can -- if you want, we  
 22 can have a copy made. If you'll be more  
 23 comfortable, we'll have another copy made that you  
 24 can refer to.

25 MR. KAPLAN: Yes. I'd like the witness

79

1 - ROBERT W. BERLINER -  
 2 to be able to see the whole thing before you  
 3 question him on it.  
 4 MR. PIZZURRO: Do you want to take a  
 5 break while that's being done?  
 6 MR. KAPLAN: Either way.  
 7 MR. PIZZURRO: Let's break for two  
 8 minutes, until she comes back with that.  
 9 (Whereupon, there was a brief recess in  
 10 the proceedings.)  
 11 Q. Okay, Mr. Berliner, okay? Mr. Berliner  
 12 ready to go?  
 13 A. Yes, sir.

14 MR. KAPLAN: Do you need time to review  
 15 it?

16 THE WITNESS: No. I've reviewed it.

17 Q. Referring to Exhibit 5, what is now the  
 18 third page -- second to the last page now, Standard  
 19 Rule 9-4.

20 Do you see that, sir?

21 A. I do.

22 Q. 9-4A states that, "An appraiser must  
 23 develop value opinions and conclusions by use of  
 24 one or more approaches that apply to the specific  
 25 appraisal assignment."

80

<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2           MR. PIZZURRO: Let's take five minutes.</p> <p>3           Let's break for lunch.</p> <p>4           (Whereupon, a lunch break was taken from</p> <p>5           12:14 p.m. to 1:07 p.m.)</p> <p>6           BY MR. PIZZURRO:</p> <p>7           Q. Mr. Berliner, can I ask you to please</p> <p>8           turn to Page 2-1 of your report, which is Exhibit</p> <p>9           1. The heading -- under the heading "Relevant</p> <p>10          GAAP," you refer to SFAS 121.</p> <p>11          Why do you have a reference to 121 under</p> <p>12          "Relevant GAAP"?</p> <p>13          A. It was the predecessor document to 142,</p> <p>14          and there was a valuation -- an impairment</p> <p>15          valuation done as of December 31st, '01, using</p> <p>16          SFAS 121, so that's why I included it.</p> <p>17          Q. Did you apply any of the criteria in</p> <p>18          SFAS 121 in any analysis that you did?</p> <p>19          A. No.</p> <p>20          Q. Did you review the 121 analysis that wa,</p> <p>21          done for Expanets and Blue Dot as of 12/31/01?</p> <p>22          A. I believe my people did.</p> <p>23          Q. And do you recall whether any fault wa,</p> <p>24          found in that analysis -- strike that.</p> <p>25          That analysis did not call for the</p>	<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2           impairment of any goodwill, did it?</p> <p>3           A. That's my understanding.</p> <p>4           Q. Did you find fault with that analysis?</p> <p>5           A. I don't recall.</p> <p>6           Q. Do you recall what the business</p> <p>7          valuation for Expanets and Blue Dot was as of</p> <p>8          December 31, '01?</p> <p>9           A. No, I don't.</p> <p>10          Q. Do you recall whether it was extremely</p> <p>11          close to the valuation that AAA determined for both</p> <p>12          of those entities as of January 1st, 2002?</p> <p>13          MR. KAPLAN: Objection to form.</p> <p>14          A. No, I don't.</p> <p>15          Q. Would it surprise you to know that the</p> <p>16          business valuation under the 121 analysis on</p> <p>17          December 31st, '01, was very close to the valuation</p> <p>18          done as of January 1st, '02, the following day?</p> <p>19          A. No.</p> <p>20          Q. One would expect that, correct?</p> <p>21          A. Yes.</p> <p>22          Q. One would not expect that the value of</p> <p>23          the asset would plummet by 50 percent or more at</p> <p>24          the tick of a clock, would one?</p> <p>25          MR. KAPLAN: Objection.</p>
<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2          A. No. One wouldn't expect that.</p> <p>3          Q. Can you look at Attachment A2 to your</p> <p>4          report? It's right -- sometimes the attachments,</p> <p>5          it's multiples, but it's right after the series of</p> <p>6          pages that ends on 2-22. It's under "Attachments"</p> <p>7          to "Basis for Opinion 2."</p> <p>8          Do you have that, sir?</p> <p>9          A. I do.</p> <p>10         Q. Now, in doing your impairment analysis</p> <p>11         for both Expanets and Blue Dot, you also computed</p> <p>12         the carrying value of those entities; is that</p> <p>13         correct?</p> <p>14         A. Yes, sir.</p> <p>15         Q. Does this attachment reflect the</p> <p>16         carrying value that you calculated for those</p> <p>17         entities?</p> <p>18         A. It does.</p> <p>19         Q. Now, in doing the impairment analysis</p> <p>20         that you performed, you recalculated the business</p> <p>21         enterprise value of Expanets and Blue Dot as of</p> <p>22         January 1st, '02; is that correct?</p> <p>23         A. Yes.</p> <p>24         Q. You then compared it to the carrying</p> <p>25         value of those entities that you computed as of</p>	<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2          June 30th, '02; is that correct?</p> <p>3          A. Yes.</p> <p>4          Q. Why would you do that?</p> <p>5          A. Give me a minute. I think the answer to</p> <p>6          the question is -- despite the wording in the -- on</p> <p>7          Page 2-12 and 2-13 of my report, the business</p> <p>8          enterprise value of 163 million is really the value</p> <p>9          as of June 30th of 2002, based upon the</p> <p>10         January 1st, '02, American Appraisal valuation</p> <p>11         adjusted for the input data.</p> <p>12         Q. Why, sir, would you change the valuation</p> <p>13         date? What was the basis for doing that?</p> <p>14         A. The -- to see whether as of June 30th,</p> <p>15         there was an impairment.</p> <p>16         Q. What criteria or standard would permit</p> <p>17         one to do that?</p> <p>18         MR. KAPLAN: Objection to the form.</p> <p>19         A. To do what?</p> <p>20         Q. To ignore the as-of valuation date that</p> <p>21         was actually done and create a new as-of date in</p> <p>22         order to do an impairment analysis.</p> <p>23         Northwestern had selected</p> <p>24         January 1st, '02, as the date because that is what</p> <p>25         the effective date of 142 was; is that correct?</p>

1 - ROBERT W. BERLINER -  
 2 A. The adoption date.  
 3 Q. The adoption date. I thought you had  
 4 testified earlier this morning that you didn't have  
 5 any problem with Northwestern's use of that date,  
 6 correct?  
 7 A. That's correct.  
 8 Q. But you unilaterally did an analysis  
 9 which has nothing to do with that date but has to  
 10 do with a date six months later.  
 11 Is that what you did?  
 12 MR. KAPLAN: Objection to the form.  
 13 A. Yes. In order to compare it to the  
 14 carrying value as of June 30th, '02.  
 15 Q. What would permit you as an auditor or  
 16 anyone to unilaterally change the effective date  
 17 that was adopted by Northwestern in order to  
 18 determine a goodwill impairment analysis was  
 19 required?  
 20 MR. KAPLAN: Objection to the form.  
 21 A. Because I employed their methodology. I  
 22 didn't change their methodology.  
 23 Q. Is there anything that you can point to  
 24 in any accounting standards or accounting  
 25 principles that would permit that unilateral change

125

1 - ROBERT W. BERLINER -  
 2 of the date?  
 3 A. There are many occasions where there's a  
 4 need to update an analysis, and this is just an  
 5 updated analysis.  
 6 Q. Sir, can you tell us as an accountant --  
 7 as an expert in accounting what criteria you relied  
 8 upon to ignore the valuation date that American  
 9 Appraisal has used and Northwestern used to come up  
 10 with an as of June 30th, 2002, appraisal date for  
 11 purposes of doing a goodwill impairment analysis?  
 12 MR. KAPLAN: Objection to the form.  
 13 A. I don't think there's anything in the  
 14 accounting literature that address that specific  
 15 question.  
 16 Q. You just did it?  
 17 A. Yeah. There is no reason that I  
 18 couldn't do it. I -- just as you update any  
 19 analysis.  
 20 Q. So do I understand, sir, that if the  
 21 goodwill impairment analysis was actually being  
 22 performed as of -- with a validation date as of  
 23 January 1st, '02, your analysis and report does not  
 24 address that situation but rather addresses a  
 25 situation in which the date is June 30th, '02, six

126

1 - ROBERT W. BERLINER -  
 2 months later; is that what you're telling us?  
 3 A. Yes.  
 4 MR. KAPLAN: Objection.  
 5 Q. Let's look at Attachment A2 again, if we  
 6 could, please. Before we get there, just let me  
 7 ask you this.  
 8 Your opinion is that the proper business  
 9 valuation or business enterprise valuation for  
 10 Expanets as of June 30th, '02, is \$163 million; is  
 11 that correct?  
 12 A. Yes.  
 13 Q. Do you have any opinion, therefore, sir,  
 14 as to what the appropriate business valuation,  
 15 business enterprise valuation for Expanets was as  
 16 of January 1, '02?  
 17 A. No.  
 18 Q. Do you have any opinion as to what the  
 19 proper business enterprise value for Blue Dots was  
 20 as of January 1, '02?  
 21 A. No.  
 22 Q. Attachment A2. If you look at the  
 23 entries which are below the line, it says,  
 24 "carrying value as of January 1, '02," and then  
 25 below that there are another series of entries.

127

1 - ROBERT W. BERLINER -  
 2 Do you see that, sir?  
 3 A. Yes.  
 4 Q. In computing the carrying value for  
 5 Expanets and Blue Dot as of June 30, '02, you used  
 6 a book value of debt as of September 30, '02.  
 7 Do you see that?  
 8 A. I do.  
 9 Q. Why would you use information which is  
 10 as of September 30 to compute the carrying value as  
 11 of June 30?  
 12 A. Because I didn't have the information as  
 13 of June 30.  
 14 Q. Where did you get the information as of  
 15 September 30?  
 16 A. The documents, indicating NOR 375926 for  
 17 Expanets and NOR 376038 for Blue Dot.  
 18 Q. There was no documentation that you had  
 19 that would have provided you with that information  
 20 as of June 30, '02?  
 21 A. I didn't have any such documentation  
 22 that I could find.  
 23 Q. That's the case for the equity value, as  
 24 well, where you used a September 30 date to compute  
 25 equity value for both Expanets and Blue Dot?

128

<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       A. That's correct.</p> <p>3       Q. Sir, is it appropriate practice to use</p> <p>4       information which is three months past the as-of</p> <p>5       date to compute the carrying value?</p> <p>6       A. It's a surrogate; certainly appropriate</p> <p>7       if you don't have the information as of one date to</p> <p>8       use subsequent information and bring it back.</p> <p>9       Q. When would the book value of debt as of</p> <p>10      9/30/02 for Expanets have become available?</p> <p>11      MR. KAPLAN: Objection.</p> <p>12      A. Available to whom?</p> <p>13      Q. To anyone. To the public.</p> <p>14      A. To the public? That's different than to</p> <p>15      the company. To the public, it would have become</p> <p>16      available when the third quarter Q was issued,</p> <p>17      sometime in November.</p> <p>18      Q. Okay. Would the book value of debt as</p> <p>19      of June 30, '02, have been available with the</p> <p>20      second quarter Q for that year?</p> <p>21      A. Can I hear that back, please?</p> <p>22      (The question requested was read back by</p> <p>23      the reporter.)</p> <p>24      A. I don't believe these figures are ^ --</p> <p>25      appear in the Qs. These are Expanets' figures.</p>	<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       And so, I don't believe these figures could be</p> <p>3       obtained from the financial statements of the Qs.</p> <p>4       Q. Well, if the book value of the debt for</p> <p>5       Expanets and Blue Dot differed from the book value</p> <p>6       for the debt of those entities --strike that.</p> <p>7       If the book value of the debt of both</p> <p>8       Expanets and Blue Dot as of June 30, '02, differed</p> <p>9       from the book value of the debt of those entities</p> <p>10      as of 9/30/02, that would change the computation of</p> <p>11      the carrying value, correct.</p> <p>12      A. Yes, sir.</p> <p>13      Q. And that would change the goodwill</p> <p>14      impairment analysis; isn't that correct?</p> <p>15      A. Yes.</p> <p>16      Q. Similar -- is the same true with respect</p> <p>17      to equity value as of 9/30/02 as compared to equity</p> <p>18      value as of June 30, '02?</p> <p>19      A. It is; the same is true.</p> <p>20      Q. It would have a compounding effect</p> <p>21      because you have two different values that would</p> <p>22      have been computed in determining the carrying</p> <p>23      value, which come from a different quarter?</p> <p>24      A. You mean both the debt and the equity?</p> <p>25      Q. Correct.</p>
129	130
<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       A. Well, that's not compounding but there</p> <p>3       would be two reasons -- two possible changes.</p> <p>4       Q. I just want to be very clear about this.</p> <p>5       Is there anything that you can tell us</p> <p>6       or point to which would have required Northwestern</p> <p>7       to have done a goodwill impairment analysis as of</p> <p>8       June 30, '02?</p> <p>9       A. Yes.</p> <p>10      Q. What's that?</p> <p>11      A. The standard would require goodwill</p> <p>12      analyses to be done if there were triggering events</p> <p>13      since the last analysis; so that here we have a</p> <p>14      situation where there was significant adverse</p> <p>15      developments that, in my mind, would have been</p> <p>16      triggering events that would require the analysis</p> <p>17      as of June 30th of '02.</p> <p>18      Q. Where would one find those triggering</p> <p>19      events or definition of what those triggering</p> <p>20      events would be?</p> <p>21      A. You mean where in the literature?</p> <p>22      Q. Yes, in the accounting standards, in the</p> <p>23      literature.</p> <p>24      A. In the facts of the case.</p> <p>25      Q. In the accounting standards or in the</p>	<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       literature.</p> <p>3       A. I believe that's discussed in 142.</p> <p>4       Q. Did you examine 142 to determine if</p> <p>5       there was such a triggering event?</p> <p>6       A. Well, you wouldn't be able to determine</p> <p>7       that from reading 142. You'd have to go into the</p> <p>8       facts and circumstances that existed with respect</p> <p>9       to Expanets in the year 2002.</p> <p>10      Q. My question is; is there a specific</p> <p>11      triggering event or criteria which is listed in 142</p> <p>12      that you used in order to justify doing a goodwill</p> <p>13      impairment analysis as of June 30, '02, as opposed</p> <p>14      to what Northwestern had selected, which is</p> <p>15      January 1, '02?</p> <p>16      MR. KAPLAN: Objection to the form.</p> <p>17      A. Yes. I believe the 142 describes the</p> <p>18      kinds of things that would be considered.</p> <p>19      Q. Is there any place in your report which</p> <p>20      reflects your reliance on those criteria or</p> <p>21      standards determining that there was a triggering</p> <p>22      event?</p> <p>23      A. I don't think I discussed that in the</p> <p>24      report.</p> <p>25      Q. Why not?</p>
131	132

<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       A. I don't recall.</p> <p>3       Q. Did you consider it?</p> <p>4       A. Did I consider what?</p> <p>5       Q. Whether there was a triggering event</p> <p>6       under 142 which permitted or required that you do a</p> <p>7       different goodwill impairment analysis than</p> <p>8       that which was performed by the company.</p> <p>9            MR. KAPLAN: Objection to form.</p> <p>10       A. Could I hear that back, please?</p> <p>11           (The question requested was read back by</p> <p>12           the reporter.)</p> <p>13       A. I did.</p> <p>14       Q. What did you consider?</p> <p>15       A. The very adverse performance during the</p> <p>16       first six months of 2002, the continuing problems</p> <p>17       with the EXPERT system and the other problems</p> <p>18       associated with the operations of Expanets.</p> <p>19       Q. Can you tell us, sir -- can you point us</p> <p>20       to anything in 142 which would justify your</p> <p>21       reliance on what you've described as triggering</p> <p>22       events?</p> <p>23       A. If we had 142, I could take a look</p> <p>24       through it. It's a fairly long pronouncement, and</p> <p>25       as best as I can recall without doing that, there</p>	<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       is a description of the kinds of things that would</p> <p>3       fall within triggering events.</p> <p>4       Q. Wouldn't it be appropriate in offering</p> <p>5       an expert opinion that an alternative goodwill</p> <p>6       impairment analysis was required to have provided</p> <p>7       your analysis of the triggering event justifying</p> <p>8       the opinion?</p> <p>9            MR. KAPLAN: Objection.</p> <p>10       A. The report is describing my</p> <p>11       determination that there was an impairment as of</p> <p>12       June 30, '02. I didn't say anything in the report</p> <p>13       about Northwestern having done the updated analysis</p> <p>14       as of that date, but that's implied by my doing it.</p> <p>15       Q. But is there anything in your report</p> <p>16       which points to anything in the accounting</p> <p>17       literature which even starts to suggest that</p> <p>18       Northwestern had an obligation to do what you</p> <p>19       decided to do unilaterally?</p> <p>20            MR. KAPLAN: Objection to the form.</p> <p>21       A. There's nothing in the report that</p> <p>22       describes that.</p> <p>23       Q. Why did you exclude it from your report?</p> <p>24            MR. KAPLAN: Objection to the form.</p> <p>25       A. Because I focused on the determination</p>
<p>133</p> <p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       of whether or not there was an impairment as of</p> <p>3       that date and it seemed pretty obvious that having</p> <p>4       concluded that there was not only an impairment but</p> <p>5       that the full amount of the goodwill should have</p> <p>6       been written off as of that date, that it was</p> <p>7       obvious to me that that suggested that Northwestern</p> <p>8       should have done the analysis as of that date.</p> <p>9       Q. Is that reflected in your report?</p> <p>10       A. No. I said it was obvious. I didn't</p> <p>11       bother stating it.</p> <p>12       Q. I see. Now, if one was going to do an</p> <p>13       entirely new goodwill impairment analysis as of</p> <p>14       June 30, '02, one would need presumably to have a</p> <p>15       new independent business enterprise valuation by a</p> <p>16       independent expert, correct?</p> <p>17       A. That would be desirable but not</p> <p>18       necessary.</p> <p>19       Q. Let me understand because I'm a little</p> <p>20       confused, Mr. Berliner. This morning when you were</p> <p>21       testifying, you testified that you were doing your</p> <p>22       valuation -- or you were actually adjusting the</p> <p>23       valuation of American Appraisals as of January 1,</p> <p>24       '02. You were not performing -- I specifically</p> <p>25       asked you about this and pointed to you the</p>	<p>134</p> <p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       language in your report.</p> <p>3       And you said, "No. My valuation date is</p> <p>4       as of January 1, '02."</p> <p>5       You took issue with what was in the</p> <p>6       valuation American Appraisals did because the</p> <p>7       projections with which they had been provided were</p> <p>8       at odds with the actual results of the company's</p> <p>9       operations in the first six months of '02.</p> <p>10       Do you remember that testimony?</p> <p>11       A. I took odds for reasons in addition to</p> <p>12       the six months '02.</p> <p>13       Q. Fine. I take your point. But with that</p> <p>14       addition, is what I just said an accurate</p> <p>15       recapitulation of what you testified to this</p> <p>16       morning?</p> <p>17       A. Yes.</p> <p>18       Q. Now you're testifying that that's not</p> <p>19       what you did. In fact, what you did was you</p> <p>20       determined that there was some triggering event in</p> <p>21       the interim between January 1, '02, and June 30,</p> <p>22       '02, which required a completely new goodwill</p> <p>23       impairment analysis to be done as of June 30, '02.</p> <p>24       And what you did not do is simply go</p> <p>25       back and revise a valuation which was as of January</p>

<p>1 - ROBERT W. BERLINER -</p> <p>2 1, '02.</p> <p>3 Is that what you're testifying to this</p> <p>4 afternoon?</p> <p>5 MR. KAPLAN: Objection.</p> <p>6 A. Well, I think there's a lot of confusion</p> <p>7 here. It's really both.</p> <p>8 In other words, I used the January 1,</p> <p>9 '02, valuation by American Appraisal as the</p> <p>10 starting point to update it to June 30, '02, so</p> <p>11 that I didn't do an independent valuation as of</p> <p>12 June 30, '02.</p> <p>13 And I don't think it would have been</p> <p>14 necessary to have an independent valuation done</p> <p>15 each quarter by Northwestern to be able to</p> <p>16 determine whether or not there was an impairment of</p> <p>17 goodwill that should be recognized in the financial</p> <p>18 statements.</p> <p>19 So if you look at my analysis and how I</p> <p>20 calculated the business enterprise value as of June</p> <p>21 30, '02, you could see that I used updated</p> <p>22 information at that time.</p> <p>23 Q. To perform an entirely new goodwill</p> <p>24 impairment analysis, correct?</p> <p>25 MR. KAPLAN: Objection to the form.</p>	<p>1 - ROBERT W. BERLINER -</p> <p>2 A. It's to take the impairment analysis</p> <p>3 that American Appraisal performed and update it.</p> <p>4 I don't know that I would call it an entirely new</p> <p>5 analysis.</p> <p>6 Q. I may come back to that, but for the</p> <p>7 moment I just want to direct your attention to the</p> <p>8 last part of your report. It's on Page 5-1 of your</p> <p>9 report.</p> <p>10 Mr. Berliner, Page 5-1, the assumption</p> <p>11 which you built into your opinions that Clark Fork</p> <p>12 remained directly liable under the QUIPS following</p> <p>13 the going flat transaction.</p> <p>14 A. Yes.</p> <p>15 Q. What if Clark Fork had not remained</p> <p>16 liable on the QUIPS following the going flat</p> <p>17 transaction, would your opinion have changed?</p> <p>18 A. No. My opinion is based on a</p> <p>19 hypothetical assumption that's stated here, that</p> <p>20 such opinion would never change. It's based on</p> <p>21 that hypothetical assumption.</p> <p>22 Q. I see. So, your assumption -- your</p> <p>23 opinion is had Northwestern -- this has to be -- I</p> <p>24 think it's not explicit but it must be implicit.</p> <p>25 Had Northwestern transferred all of the</p>
<p>1 - ROBERT W. BERLINER -</p> <p>2 assets except the Milltown Dam to itself, but left</p> <p>3 liabilities, simply the QUIPS liabilities to be</p> <p>4 paid by Clark Fork, that would have rendered Clark</p> <p>5 Fork insolvent or would have put it in a position</p> <p>6 where its total liabilities exceeded its total</p> <p>7 assets.</p> <p>8 A. Exactly.</p> <p>9 MR. KAPLAN: Objection to the form.</p> <p>10 Q. So it has to be both, both Northwestern</p> <p>11 had to take the assets and Northwestern had to</p> <p>12 leave that liability, correct?</p> <p>13 A. Correct.</p> <p>14 Q. If both of those assumptions aren't</p> <p>15 built in, of course, we're talking about a</p> <p>16 different set of facts and hypotheticals and you</p> <p>17 have no opinion; is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. It's a little like if my mother had</p> <p>20 wheels, she'd be a car.</p> <p>21 MR. KAPLAN: Objection.</p> <p>22 A. I don't know your mother.</p> <p>23 MR. PIZZURRO: Let's take five minutes,</p> <p>24 please.</p> <p>25 (Whereupon, there was a brief recess in</p>	<p>1 - ROBERT W. BERLINER -</p> <p>2 the proceedings.)</p> <p>3 MR. PIZZURRO: I have no further</p> <p>4 questions.</p> <p>5 EXAMINATION BY MR. KALECZYC:</p> <p>6 Q. Mr. Berliner, my name is Stan Kaleczyc.</p> <p>7 I represent Mike Hanson and Ernie Kindt in the</p> <p>8 Magten Asset Management versus Hanson and Kindt</p> <p>9 case.</p> <p>10 If I understood your testimony earlier</p> <p>11 this morning, you personally came on board and were</p> <p>12 engaged to work on your expert report on about</p> <p>13 August 11th of 2007.</p> <p>14 MR. KAPLAN: Objection.</p> <p>15 A. That was about when we found out the due</p> <p>16 date.</p> <p>17 Q. When did you -- well, when did you begin</p> <p>18 to personally work on the expert report that you've</p> <p>19 offered in this case?</p> <p>20 A. I began probably at the tail end of</p> <p>21 July.</p> <p>22 Q. For the 50 or so days between the end of</p> <p>23 July and September 19th, the date of the report,</p> <p>24 could you estimate for me about how much time you</p>

<p>1        - ROBERT W. BERLINER -</p> <p>2        through the pages that on Page 1-3 I cited from</p> <p>3        SFAS Number 5. I know that standard pretty well,</p> <p>4        and so I did not go back to read that standard.</p> <p>5        However, in drafting the report, my</p> <p>6        colleague excerpted from that standard. I read the</p> <p>7        excerpts on Page 1-3, and they conformed to my</p> <p>8        recollection of what that standard said. I didn't</p> <p>9        go back and check word for word that he had</p> <p>10      excerpted each word accurately.</p> <p>11      Q. I believe it was your testimony this</p> <p>12      morning -- and correct me if I didn't hear it or</p> <p>13      I'm remembering it not properly, that the</p> <p>14      appendices were prepared by your colleagues and</p> <p>15      reviewed -- you reviewed their work?</p> <p>16      A. That's correct.</p> <p>17      Q. So, you're not the original author of</p> <p>18      any of the material contained in the appendices to</p> <p>19      the report; is that correct?</p> <p>20      A. That's correct.</p> <p>21      Q. In reviewing the Complaint in Magten</p> <p>22      versus Hanson and Kindt, sitting here today, what</p> <p>23      is your understanding of what the allegations are</p> <p>24      against Mr. Hanson and Mr. Kindt?</p> <p>25      A. I don't recall what's in that Complaint.</p>	<p>1        - ROBERT W. BERLINER -</p> <p>2        It was among the early documents that I looked at,</p> <p>3        and I did not address any allegations against any</p> <p>4        specific individuals. That was not within the</p> <p>5        scope of my engagement.</p> <p>6        Q. Did you discuss the Hanson and Kindt</p> <p>7        Complaint with anyone before the time that you</p> <p>8        prepared your expert report?</p> <p>9        A. I did not.</p> <p>10      Q. Have you discussed the Hanson and Kindt</p> <p>11      Complaint with anyone since the time that --</p> <p>12      September 19th when the report was finalized?</p> <p>13      A. I did not.</p> <p>14      Q. Did anyone specifically tell you not to</p> <p>15      address the allegations contained in the Hanson and</p> <p>16      Kindt Complaint?</p> <p>17      A. No, sir.</p> <p>18      Q. Why is it then, Mr. Berliner, that your</p> <p>19      expert report references both the case against</p> <p>20      Northwestern and the case against Hanson and Kindt?</p> <p>21      When I say "references," I mean in the title</p> <p>22      caption on Page 1.</p> <p>23      A. I don't recall the reason.</p> <p>24      Q. In your report, do you render any</p> <p>25      opinion concerning Mike Hanson's knowledge</p>
<p>1        - ROBERT W. BERLINER -</p> <p>2        concerning whether there was inadequate</p> <p>3        consideration given in the going flat transaction?</p> <p>4        MR. KAPLAN: Objection to the form.</p> <p>5        A. No, I don't.</p> <p>6        Q. Did you examine that issue as part of</p> <p>7        the preparation of your expert report?</p> <p>8        A. I did not.</p> <p>9        Q. Did you, in the course of preparing your</p> <p>10      opinion, form an opinion as to whether Mike Hanson</p> <p>11      violated any generally accepted accounting</p> <p>12      principles?</p> <p>13      A. I did not.</p> <p>14      Q. Did you consider whether Mr. Hanson may</p> <p>15      have violated any generally accepted accounting</p> <p>16      principles?</p> <p>17      A. No. As I indicated, I didn't address</p> <p>18      myself to any one individual.</p> <p>19      Q. Likewise, then, I assume that you have</p> <p>20      no opinion as to whether Mr. Hanson failed to</p> <p>21      timely recognize any goodwill impairments?</p> <p>22      A. That's correct.</p> <p>23      Q. And it would be your same view, then,</p> <p>24      with respect to whether Mr. Hanson breached any</p> <p>25      fiduciary duties owed to anyone?</p>	<p>1        - ROBERT W. BERLINER -</p> <p>2        A. That's correct.</p> <p>3        Q. During the time period on or about</p> <p>4        November 15th, 2002, do you know what Mr. Hanson's</p> <p>5        position was with Northwestern?</p> <p>6        A. I understood him to be the -- the head</p> <p>7        of the utility business.</p> <p>8        Q. Could you -- when you say "utility"</p> <p>9        business, what do you mean by that?</p> <p>10      A. Northwest Energy, the business in South</p> <p>11      Dakota and then eventually Montana as well.</p> <p>12      Q. Do you know if Northwestern had any</p> <p>13      utility business activities in any other states</p> <p>14      besides South Dakota and Montana?</p> <p>15      A. I think there was one other state. I</p> <p>16      can't recall whether it's North Dakota. There's</p> <p>17      one other state, maybe more than one other state.</p> <p>18      Q. With respect to Mr. Kindt, do you know</p> <p>19      what position Mr. Kindt held with Northwestern on</p> <p>20      or about November 15th, 2002?</p> <p>21      A. I think he was the vice president of</p> <p>22      accounting.</p> <p>23      Q. Was he the vice president of accounting</p> <p>24      for Northwestern Corporation?</p> <p>25      A. I think he was with Montana Power. I'm</p>

<p>1            - ROBERT W. BERLINER -</p> <p>2        not certain of that.</p> <p>3        Q. Would it make any difference to you</p> <p>4        whether he was with Montana -- as you referred to</p> <p>5        it Montana Power, and I assume you mean Montana</p> <p>6        Power LLC rather than with Northwestern</p> <p>7        Corporation?</p> <p>8        A. No.</p> <p>9        Q. Why not?</p> <p>10      A. Because I expressed my opinions based</p> <p>11      upon Northwestern and its collective management</p> <p>12      not any specific individual. I did not address any</p> <p>13      of these positions I took in my report as they may</p> <p>14      apply to any specific individual.</p> <p>15      Q. So, then I assume your answers will be</p> <p>16      the same with respect to Mr. Kindt that I asked you</p> <p>17      with respect to Mr. Hanson, and that is that you</p> <p>18      did not form an opinion as to whether Mr. Kindt did</p> <p>19      anything the violate any generally accepted</p> <p>20      accounting principles in 2002?</p> <p>21      A. That's correct.</p> <p>22      Q. And likewise, you have no opinion as to</p> <p>23      whether Mr. Kindt failed to timely recognize any</p> <p>24      goodwill impairment for Blue Dot or Expanets?</p> <p>25      A. That's correct.</p>	<p>1            - ROBERT W. BERLINER -</p> <p>2        Q. And similarly, you have no opinion as to</p> <p>3        whether Mr. Kindt was involved in a failure to</p> <p>4        provide adequate consideration with respect to the</p> <p>5        going flat transaction?</p> <p>6        A. That's correct.</p> <p>7        Q. And you have no opinion as to whether</p> <p>8        Mr. Kindt violated any fiduciary duties?</p> <p>9        A. That's correct.</p> <p>10      Q. Do you know whether Mr. Kindt had any</p> <p>11      responsibilities with respect to Blue Dot? I'm</p> <p>12      talking about the period in 2002.</p> <p>13      A. I don't know for certain, but my</p> <p>14      recollection is he did not.</p> <p>15      Q. Again, with respect to Mr. Kindt, do you</p> <p>16      know whether he had any responsibilities with</p> <p>17      respect to Expanets?</p> <p>18      A. No, I don't.</p> <p>19      Q. Do you know whether Mr. Kindt had any</p> <p>20      responsibilities with respect to the accounting of</p> <p>21      Northwestern Corporation as distinct from the</p> <p>22      accounting for the Montana utility business?</p> <p>23      MR. KAPLAN: Objection to form.</p> <p>24      A. No, I don't.</p> <p>25      Q. With respect to Mr. Hanson, do you know</p>
<p>1            - ROBERT W. BERLINER -</p> <p>2        whether he had any responsibilities with respect to</p> <p>3        the management of Blue Dot?</p> <p>4        A. I don't believe he did.</p> <p>5        Q. Do you know whether Mr. Hanson had any</p> <p>6        responsibilities with respect to the management of</p> <p>7        Expanets?</p> <p>8        A. I don't believe he did.</p> <p>9        Q. Do you know whether Mr. Hanson was</p> <p>10      responsible for any of the accounting activities of</p> <p>11      Northwestern Corporation?</p> <p>12      A. I don't believe he was responsible for</p> <p>13      the accounting.</p> <p>14      Q. Do you know who was responsible during</p> <p>15      the 2002 time period for the accounting activities</p> <p>16      of Northwestern?</p> <p>17      A. I believe it was Mr. Orme.</p> <p>18      Q. Do you know who was responsible during</p> <p>19      that time for financial disclosures which may have</p> <p>20      been made by Northwestern Corporation?</p> <p>21      A. Again, I would say Mr. Orme.</p> <p>22      Q. You would agree with me that to your</p> <p>23      knowledge Mr. Hanson had no responsibilities for</p> <p>24      those accounting -- for those disclosure</p> <p>25      requirements and functions?</p>	<p>1            - ROBERT W. BERLINER -</p> <p>2        MR. KAPLAN: Objection to form.</p> <p>3        A. I would think if I were in his shoes and</p> <p>4        there were financial statements and disclosures</p> <p>5        that reflected various things relating to the</p> <p>6        operations for which I was responsible, I would be</p> <p>7        monitoring that.</p> <p>8        Q. And those responsibilities, as you</p> <p>9        testified earlier, refer to the utility business</p> <p>10      operations of Northwestern, correct?</p> <p>11      A. That's correct.</p> <p>12      Q. Would your answers be the same with</p> <p>13      respect to Mr. Kindt, concerning financial</p> <p>14      disclosures of Northwestern?</p> <p>15      A. Yes.</p> <p>16      Q. So that you would agree with me that</p> <p>17      Mr. Kindt's responsibilities, if any, associated</p> <p>18      with the disclosures by Northwestern Corporation's</p> <p>19      would be limited to the utility business with which</p> <p>20      he was familiar?</p> <p>21      A. That would be my recollection, yes.</p> <p>22      Q. And that would even be the utility</p> <p>23      business by which he was specifically employed?</p> <p>24      A. Yes.</p> <p>25      Q. Did you review the deposition of</p>

<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       Mr. Hanson in preparation of your expert report?</p> <p>3       A. I did.</p> <p>4       Q. Did you review the deposition of</p> <p>5       Mr. Kindt in preparation of your expert report?</p> <p>6       A. I did.</p> <p>7       Q. How about the deposition of Mr. Talton</p> <p>8       Embry?</p> <p>9       A. No, I did not.</p> <p>10      Q. Do you know who Mr. Embry is?</p> <p>11      A. I believe he's with Magten.</p> <p>12      Q. I think you had testified this morning,</p> <p>13      Mr. Berliner, that you did not find anything in the</p> <p>14      depositions that you reviewed to be particularly</p> <p>15      useful for your expert report.</p> <p>16      Am I remembering your testimony</p> <p>17      correctly?</p> <p>18      MR. KAPLAN: Objection.</p> <p>19      A. No. That was not accurate.</p> <p>20      Q. You would help me, then. I don't want</p> <p>21      to be inaccurate in asking you questions.</p> <p>22      You reviewed -- tell me first, in</p> <p>23      addition to the Hanson, Kindt and Embry</p> <p>24      depositions, what other depositions did you review</p> <p>25      in the preparation of your expert report?</p>	<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       A. They're all listed in the last exhibit</p> <p>3       to my report; that's Exhibit E.</p> <p>4       Q. So with respect to those depositions</p> <p>5       that you did review, Mr. Berliner, you refresh my</p> <p>6       memory, then, so that the record is accurate as to</p> <p>7       what you testified to this morning with respect to</p> <p>8       these depositions.</p> <p>9       MR. KAPLAN: Just to clarify, I think he</p> <p>10      meant Exhibit F, so the record is clear.</p> <p>11      THE WITNESS: You're right; it's</p> <p>12      Exhibit F.</p> <p>13      MR. KAPLAN: I apologize for</p> <p>14      interrupting the questioning.</p> <p>15      MR. KALECZYC: That's all right.</p> <p>16      Q. Again, my question was: If you could</p> <p>17      refresh my memory as to what you testified to this</p> <p>18      morning about the utility of those -- review of</p> <p>19      those depositions?</p> <p>20      A. Yeah. The deposition transcripts</p> <p>21      covered many subjects. What seems to me to be the</p> <p>22      principal subject covered, at least in terms of the</p> <p>23      attention devoted during the time of the</p> <p>24      depositions, had to do with the utility business,</p> <p>25      the acquisition of Montana Power, the going flat</p>
<p>153</p> <p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2      transaction, and that kind of stuff.</p> <p>3      And that's what I meant that I didn't</p> <p>4      find relevant to the opinions that I would be</p> <p>5      expressing in my report. But there were other</p> <p>6      coverage of the Blue Dot and the Expanets</p> <p>7      situations and the other accounting improprieties</p> <p>8      at Northwestern that were relevant to the report.</p> <p>9      Q. Sitting here today, Mr. Berliner, was</p> <p>10     there anything in Mr. Kindt's deposition that you</p> <p>11     found relevant to your expert report that you've</p> <p>12     submitted in these cases?</p> <p>13     A. I really don't recollect any individual</p> <p>14     deposition that I read back in early August.</p> <p>15     Q. Would you agree with me that there are</p> <p>16     no references to Mr. Kindt's deposition contained</p> <p>17     in your expert report or the -- including the</p> <p>18     appendices, other than Exhibit F itself?</p> <p>19     A. Yes. I believe that's correct.</p> <p>20     Q. Was that because you found nothing</p> <p>21     terribly useful or relevant for purposes of the</p> <p>22     opinions that you'd rendered?</p> <p>23     A. Yes.</p> <p>24     MR. KAPLAN: Objection.</p> <p>25     Q. With respect to Mr. Hanson's deposition,</p>	<p>154</p> <p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2      is there anything from Mr. Hanson's deposition that</p> <p>3      you found to be relevant to the opinions that you</p> <p>4      rendered in your report?</p> <p>5      A. I don't think so.</p> <p>6      Q. If we could turn to Page 4 of your</p> <p>7      report, which contains the opinions, Mr. Berliner.</p> <p>8      In Opinion Number 2, which contains the four</p> <p>9      Subparagraphs A through D, each one begins with the</p> <p>10     term, "Northwestern management knowingly," and then</p> <p>11     Sub A, "that Northwestern management knowingly</p> <p>12     violated GAAP in preparing Northwestern's</p> <p>13     consolidated financial statements for each of the</p> <p>14     first three-quarters."</p> <p>15     When you refer to "Northwestern's</p> <p>16     management," to whom are you referring?</p> <p>17     A. I'm referring to primarily Mr. Orme, but</p> <p>18     Mr. Lewis, Mr. Hylland, those top people.</p> <p>19     Q. You said "primarily" those three</p> <p>20     individuals. Anyone else?</p> <p>21     A. Primarily those three, maybe Kendell</p> <p>22     Cleaver as well, but those people.</p> <p>23     Q. Mr. Lewis held what position in the</p> <p>24     company?</p> <p>25     A. CEO.</p>

<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       Q. Mr. Hylland had what position?</p> <p>3       A. I believe it was COO.</p> <p>4       Q. Mr. Orme?</p> <p>5       A. CFO.</p> <p>6       Q. And Mr. Kendall Cleaver?</p> <p>7       A. Director of accounting, something like 8       that.</p> <p>9       Q. So when you're talking about 10      Northwestern's management with respect to 11      Opinion 2A, it would be those four individuals?</p> <p>12       A. Yes.</p> <p>13       Q. With respect to your Opinion 2B, which 14      reads, "Northwestern's management knowingly failed 15      to timely recognize goodwill impairment losses by 16      intentionally providing artificial cash flow 17      projections to American Appraisal."</p> <p>18       Again, are you referring to the four 19      individuals Lewis, Hylland, Orme and Cleaver, or 20      are other people implicated in 2B?</p> <p>21       A. The other people that would be 22      implicated would be the management of Expanets and 23      the management of Blue Dot.</p> <p>24       Q. With respect to your Opinion 2C, which 25      reads, "Northwestern's management knowingly failed</p>	<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       in its various filings with the SEC to comply with 3       the disclosure requirements under SEC regulations. 4       Which individuals are you referring to 5       as management with respect to 2C?</p> <p>6       A. Mr. Lewis, Mr. Hylland, Mr. Orme and 7       Mr. Cleaver.</p> <p>8       Q. With respect to your opinion on 2D, 9       which reads, "Northwestern's management knowingly 10      disseminated materially false and misleading 11      information to the public."</p> <p>12       Again, the same question: Which 13      individuals are you referring to as the management?</p> <p>14       A. Again, the same answer; the same four 15      people.</p> <p>16       Q. With respect to your Opinion Number 3, 17      which reads, "Northwestern would have violated its 18      debt covenants for the quarters ended June 30th and 19      September 30th, 2002, but for the violations of 20      GAAP discussed in this report."</p> <p>21       Do you have an opinion as to whether 22      Mr. Hanson was responsible for any of those 23      violations of GAAP discussed in your report?</p> <p>24       A. No, I don't.</p> <p>25       Q. How about Mr. Kindt, any opinion?</p>
<p>157</p> <p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       A. I have no opinion.</p> <p>3       Q. In your opinion, which individuals were 4       responsible for the GAAP violations?</p> <p>5       A. The four people I mentioned at 6       Northwestern.</p> <p>7       Q. And that's --</p> <p>8       A. Mr. Lewis, Mr. Hylland, Mr. Orme and 9       Mr. Cleaver, collectively.</p> <p>10       Q. Now, in your report in a number of 11      places, you discuss such things as -- for example, 12      the proper accounting for the contracts that 13      Expanets had.</p> <p>14       Do you remember that testimony -- that?</p> <p>15       A. Yes.</p> <p>16       Q. What type of analysis would be required 17      to determine the appropriate accounting treatment 18      for those contracts as to whether they should be 19      done on a completed or ongoing basis?</p> <p>20       MR. KAPLAN: Objection to the form.</p> <p>21       A. The nature of the contracts and what was 22      called for under the contracts and the ability of 23      the entity to reasonably estimate the percentage of 24      completion.</p> <p>25       Q. For someone to make that determination,</p>	<p>158</p> <p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       what kinds of information would they need to have 3       about those contracts?</p> <p>4       MR. KAPLAN: Objection to the form.</p> <p>5       A. Need to have information as to what the 6       deliverables were under the contract, how the 7       estimates of what the costs would be involved to 8       perform, what was required to be performed under 9       the contract, whether the accounting systems and 10      procedures of the company were such as to be able 11      to reasonably estimate those costs and monitor them 12      as time went on; information of that nature.</p> <p>13       Q. Would it be fair to say, given your 14      prior answer, that you'd have to have a fairly good 15      working knowledge of the business of Expanets in 16      order to make that determination?</p> <p>17       A. That would help a lot.</p> <p>18       Q. In order to do a discounted cash flow 19      analysis for appraisal purposes, is that the kind 20      of activity that can be done by anyone who is a 21      certified public accountant?</p> <p>22       MR. KAPLAN: Objection to the form.</p> <p>23       A. No. There are many certified public 24      accountants who don't get involved in that kind of 25      work.</p>

<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2       A. That was one reason. The other reason 3     is that the optimistic data that was inputted into 4     the income approach likewise impacted the market 5     approach, and given that they received equal 6     weighting, that we could come up with a reasonable 7     approximation of an impairment loss without doing a 8     market study.</p> <p>9       Q. I take it you were able to come to that 10    decision based upon the expertise that you 11    developed in reviewing valuations and business 12    enterprise value reports?</p> <p>13      A. It would be that plus the combined 14    expertise and experience of the other people on my 15    team.</p> <p>16      Q. Did the other people on your team also 17    have expertise with respect to critiquing business 18    valuation reports?</p> <p>19      A. Yes.</p> <p>20      Q. But you -- I believe you also testified 21    this morning that you yourself have never done a 22    valuation?</p> <p>23      A. I don't do valuations.</p> <p>24      Q. And, in fact, you have -- you're not, in 25    any way, have any certifications or recognitions as</p>	<p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2     a value appraiser?</p> <p>3       A. That's correct.</p> <p>4       Q. You also testified this morning that the 5     first time, I think, you became aware of USPAP was 6     when you read the expert reports tendered by the 7     defendants in the two cases?</p> <p>8       A. The first time I became aware that the 9     standards that applied to the appraisal community 10    were called USPAP.</p> <p>11      Q. Was that the first time, then, that you 12    had reviewed USPAP standards was in response to the 13    expert reports filed by the defendants in this 14    case?</p> <p>15      A. Can I hear that back?</p> <p>16      (The question requested was read back by 17    the reporter.)</p> <p>18      A. I did not review the USPAP standards in 19    connection with my review of the expert reports 20    filed by the defendants in this case.</p> <p>21      Q. Prior to the preparation of the expert 22    report in this case, have you ever reviewed USPAP 23    standards?</p> <p>24      A. No.</p> <p>25      Q. Were you aware of the existence of those</p>
<p>165</p> <p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2     USPAP standards prior to the time that you became 3     involved in the expert reports in this case?</p> <p>4       A. I think I testified that I was aware 5     that there were standards, that I didn't recall 6     them being commonly referred to as USPAP.</p> <p>7       Q. Did you refer -- excuse me. 8       Did you review Mr. Scherf's expert 9     report filed in this case?</p> <p>10      A. I reviewed three reports, including his.</p> <p>11      Q. Do you have any opinions concerning 12    Mr. Scherf's expert report?</p> <p>13      A. I didn't agree with the views in any 14    three -- in any one of those three reports. What 15    specifically was said by Mr. Scherf, I don't 16    specifically recall at the moment.</p> <p>17      Q. If you would tell me generally what you 18    don't agree with in those three expert reports.</p> <p>19      A. Well, a number of things. First, I 20    don't believe that you have to be a valuation 21    expert to review the report of a valuation expert, 22    and that's consistent with a statement on Auditing 23    Standard 73. And so I think that the allegations 24    of my not having credentials in the appraisal 25    industry are without merit for that reason.</p>	<p>166</p> <p>1           <b>- ROBERT W. BERLINER -</b></p> <p>2     I don't agree with the criticism that I 3     used hindsight inappropriately in the work I did. 4     And there were several other criticisms that I 5     didn't agree with.</p> <p>6       Q. Any of those others come to mind sitting 7     here today?</p> <p>8       A. Not at the moment.</p> <p>9       Q. If you would turn, sir, to Page 3-6 of 10    your report. And I draw your attention to the 11    second paragraph that begins, "As further 12    indication of management knowledge," you refer to a 13    February 18th, 2002, memorandum.</p> <p>14      Do you see that, sir?</p> <p>15      A. I do.</p> <p>16      Q. Did you have occasion to review that 17    memorandum in connection with the preparation of 18    your expert report?</p> <p>19      A. I don't recall.</p> <p>20      Q. If I represented to you, Mr. Berliner, 21    that this particular memorandum to which you're 22    referring was actually produced on or about 23    February 18th, 2003, rather than 2002, does that 24    change any of the opinions that you express with 25    respect to that report?</p>